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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Petition of Bell Atlantic Corporation )  
For Relief from Barriers to Deployment )  
of Advanced Telecommunications Services )

CC Docket No. 98-11

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Petition of Ameritech Corporation )  
For Relief from Barriers to Deployment )  
of Advanced Telecommunications Services )

CC Docket No. 98-32

Petition of U S West Corporation )  
For Relief from Barriers to Deployment )  
of Advanced Telecommunications Services )

CC Docket No. 98-26

INTERMEDIA COMMUNICATIONS INC.  
REPLY COMMENTS OPPOSING DEREGULATION OF INCUMBENT  
LOCAL EXCHANGE CARRIER DATA NETWORKS AND SERVICES

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**INTERMEDIA COMMUNICATIONS INC.  
REPLY COMMENTS OPPOSING DEREGULATION OF INCUMBENT  
LOCAL EXCHANGE CARRIER DATA NETWORKS AND SERVICES**

Intermedia Communications Inc. ("Intermedia"), by its counsel, submits these reply comments in opposition to the Bell operating companies' ("BOC") petitions to the Commission in the above-captioned dockets. As the nation's largest independent competitive local exchange carrier ("CLEC") and as a market leader in cutting-edge digital data services, such as Asynchronous Transfer Mode and Frame Relay, Intermedia submits that any Commission action to deregulate BOC data networks and services would strengthen BOC control over bottleneck facilities, enhance BOC market power, stifle innovation, and slow the deployment of advanced telecommunications services to the public. In these reply comments, Intermedia stresses four main points:

1. The BOC petitions are designed to reinforce existing BOC market power, and not to encourage the deployment of advanced telecommunications services, such as digital subscriber line ("DSL") service;

2. Wholesale service offerings reduce BOC investment risk and speed capital recovery by accelerating the availability of new products to consumers;
3. The Commission should reject any BOC effort to separate cabling from electronics as another incumbent local exchange carrier ("ILEC") attempt to raise CLEC recombination costs; and
4. The Commission should use section 706 to force ILECs to honor their obligations to CLECs, which will promote the deployment of advanced telecommunications services.

**I. The BOC petitions are best explained as yet another attempt to side-step unbundling obligations and maintain monopoly control over bottleneck facilities**

Robust competition is the best means of ensuring rapid deployment of any advanced technology. Without competition, product rollout takes longer, consumer prices stay higher, and investment recovery takes longer. Take ISDN loop technology, for example. ISDN was a working, but BOC-controlled, technology for 20 years before it became widely available,<sup>1</sup> and competitive pressure – not BOC deregulation – brought ISDN to market. Without the threat of competition, BOC monopolists simply feel no compulsion to move quickly to introduce new services in any effective way. When a new, innovative product sits on the shelf, costs don't get recovered from sales, costs get recovered from ratepayers, who ultimately shelter all BOC service from risk.

With risk protection and profit protection embedded in all BOC loop services – including wholesale services provided to CLECs – the motivation underlying the BOC petitions

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<sup>1</sup> *Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act*, RM No. 9244, Comments of AT&T at 5 (noting the ILECs' "dismal history" of the deployment of ISDN, which was a working technology for 20 years before it became widely commercially available). *See also*, WorldCom at 35.

and comments seems best explained by an unyielding BOC desire to maintain market power in their home regions.<sup>2</sup> BOCs argue that deregulation will allow them to save the internet backbone and section 271 approval will allow them to bring price competition to the "lucrative" long distance market. Tellingly, although nothing prevents a BOC from providing any service – including information and long distance services – outside of the BOC's home region, not one BOC has engaged in any meaningful out-of-region activity. Thus, the Commission should see these petitions for what they are: another attempt by the BOCs to exercise market power.

**II. By offering products to CLECs at wholesale rates, new BOC products are rapidly deployed to the market, which decreases BOC risk and quickens investment recovery**

Wholesale service offered through unbundling and resale actually reduces BOC investment risk and speeds BOC capital recovery. By wholesaling service to CLECs, the BOC's increase tremendously the size of the sales staff bringing a product to market, and every single CLEC sale benefits the BOCs by generating wholesale revenue. CLEC sales competition encourages CLECs and BOCs to offer new products to the broadest possible base of consumers at the lowest possible price. As the number of customers subscribing to a service increases, the marginal cost of serving an additional customer decreases, which results in lower prices for

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<sup>2</sup> BOCs have federal and state mechanisms to ensure that the BOCs are able to recoup all loop investment. For example, UNE prices are established using a risk-adjusted cost of capital, and the interstate rate of return for local exchange carriers is 11.25%. Furthermore, if BOCs feel that they are receiving an inadequate return on their services, the BOCs are free to petition federal and state regulators for rate increases. As such, any risk associated with BOC investment in loop technology is borne by captive ratepayers, not BOC shareholders.

consumers. As prices fall, more customers purchase the new service, which increases BOC revenue and speeds BOC investment recovery.

Additionally, wholesale service offerings encourage product innovation. CLECs such as Intermedia are able to take existing BOC products and develop new applications that benefit both consumers and the BOCs. Consumers benefit by having access to services that they previously did not know could benefit them, and BOCs benefit by generating revenue that they otherwise would not have received. CLECs purchasing wholesale service additionally benefit the BOCs by minimizing the amount of idle capacity existing on the BOC networks. Thus, CLECs actually benefit the BOCs by generating wholesale revenue from innovative new service offerings and from utilizing the excess capacity that exists today on BOC networks.

**III. The Commission should reject any BOC effort to contrive a distinction between cabling and electronics as just another new BOC strategy for thwarting access to unbundled network elements**

The BOC comments on the 706 petitions and the BOC 706 petitions themselves reveal an intent to separate copper and fiber cabling from the attached electronics. BellSouth, for example, argues that it should not have to provide unbundled DSL loops so long as it offers copper cable conditioned to provide DSL.<sup>3</sup> In other words, the BOCs are attempting to break integrated network equipment into nonsensical subcomponents in order to prevent competitors from providing advanced telecommunications service over BOC bottleneck facilities. The Commission should expressly reject any effort by the BOCs to separate the copper cable used in

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<sup>3</sup> E.g., BellSouth at 11.

the loop from the attached electronics, which allow the cable to transmit telecommunications service.

A piece of copper or fiber cable, by itself, is incapable of providing telecommunications service. Rather, telecommunication over a cable becomes possible only when the cable is attached to electronics at both ends. Cable and electronics together create the transmission facility that allows a signal to be transmitted. Cable standing alone is just cable, and electronic equipment standing alone is just electronic equipment. Thus, the loop, as a transmission facility, exists only when cable and electronics are combined to provide telecommunications service (*e.g.*, DS1, ISDN, or DSL).

The arguments that the BOCs have raised in their petitions and comments make clear that the BOCs plan to continue to obstruct CLEC access to the local loop by stripping the electronics off of the loops and arguing that CLECs must somehow "recombine" the piece parts. Intermedia has seen Southwestern Bell Telephone ("SWBT") make this exact argument in recent section 271 hearings in Austin, Texas. There, SWBT argued that it had no obligation to provide 56 or 64 kbps loops to Intermedia; instead, SWBT indicated that it would provide conditioned loops, and Intermedia could attach its own electronics. Not surprisingly, SWBT had no idea how a CLEC might do this in practice. Intermedia expects other BOCs to begin making similar arguments. A Commission finding at this time that the BOCs and all ILECs are obligated to provide loops as loops – *i.e.*, cable or fiber attached to electronics at either end – will settle this controversy and will obviate unnecessary litigation before it wastes valuable Commission and CLEC resources.

Moreover, the Commission should state expressly that the ILECs are obligated to make any DSL-based services introduced available for resale by CLECs at the wholesale

discount prescribed by the state commissions. As evidenced by the Act, Congress views resale as a way to encourage rapid CLEC market entry. Additionally, the Commission has time and again stressed that resale benefits consumers by increasing the number of competitive alternatives available to consumers. A clear statement by the Commission mandating DSL resale will provide much needed certainty to the industry and preclude the need for future litigation.

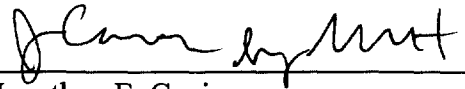
**IV. The Commission should use 706 to force the BOCs to open their networks to competition, not to deregulate the BOC monopolies**

The Commission should use section 706 as another tool for ensuring that the BOCs comply fully with the Act's 14-point competitive checklist before allowing entry into in-region long distance markets. Section 706 directs the Commission to take action to remove "barriers to infrastructure investment" if the Commission finds that advanced telecommunications services are not being deployed quickly enough. The greatest existing barrier to infrastructure investment is the BOCs' chronic defiance of orders issued by this Commission and state commissions attempting to implement the procompetitive portions of the Communications Act. The Commission to date consistently has demonstrated its determination to ensure that the BOCs and other ILECs comply with the Act, and Intermedia submits that the Commission should maintain its present course and utilize all available legislative tools, including section 706, to ensure that the BOCs and other ILECs satisfy their statutory obligations.

**IV. Conclusion**

For the reasons discussed above, Intermedia respectfully requests that the Commission deny the BOC petitions to deregulate their data networks and services.

Respectfully submitted,



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May 6, 1998



CERTIFICATE OF SERVICE

I hereby certify that I have, this 6 day of May, 1998, served this day a copy of the foregoing INTERMEDIA COMMUNICATIONS INC. COMMENTS OPPOSING DEREGULATION OF INCUMBENT LOCAL EXCHANGE CARRIER DATA NETWORKS AND SERVICES by hand delivery to the following:

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